



I.E. "BUSTER" BROWN
State Senator
District 17

The Senate of The State of Texas

RQ-1035

PRESIDENT PRO TEMPORE
1989

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FILE # ML-39925-97
July 14, 1997

ID # 39925

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OPEN RECORDS DIVISION

The Honorable Dan Morales
Attorney General
State of Texas
P.O. Box 12548
Austin, Texas 78711-2548

FILE # OR-109303-97
ID # 109303

RE: Request for Attorney General's Opinion Regarding the Authority of the Texas Department of Protective and Regulatory Services in Regard to School Districts

Dear General Morales:

Since March, 1996, the Texas Department of Protective and Regulatory Services, Child Protective Services Division (CPS), has been sending a letter to all Texas school districts for dissemination to school principals, as attached, setting forth its position with respect to the conduct of student interviews by CPS caseworkers on school campuses and CPS access to student records. As evidenced by that letter, the CPS asserts that it has the right to conduct investigatory interviews at its discretion. The CPS also maintains that it is entitled to obtain student records immediately upon request and without parental permission.

According to school officials, clarification is needed to determine the level of discretion, if any, that a campus administrator has in allowing access to a student or to a student's school records. School officials describe situations where CPS is at odds with campus administrators and further clarification of the law is needed, such as when a CPS investigator insists on interviewing a student on campus without any school personnel being present. School officials have informed me that there may be a conflict between their desire to cooperate with the CPS investigation and the officials' obligation to protect and act in the best interest of students under their charge. Part of their responsibilities, the school officials maintain, is to be knowledgeable of all activities on campus, including those of outside agencies such as the CPS.

School district personnel interpret the position taken by CPS as extending beyond its express statutory authority. Section 261.302 of the Texas Family Code provides, in pertinent part, that:

(b) The interview with and examination of the child [by CPS] may:

- (1) be conducted at any reasonable time and place, including the child's home *or* the child's school; and
- (2) include the presence of persons the department or designated agency determines are necessary. (Emphasis added).



Section 261.303 of the Texas Family Code, also provides further, that:

(b) If admission to the home, school, or any place where the child may be cannot be obtained, then *for good cause* shown the court having family law jurisdiction shall order the parent, the person responsible for the care of the children, or the person in charge of any place where the child may be to allow entrance for the interview, examination, and investigation. (Emphasis added).

Finally, with respect to CPS access to student records, please also take into consideration the Texas Public Information Act which provides student records are to be made available upon the request of "a person conducting a child abuse investigation...." See Texas Government Code, Section 552.114. That Act also provides, however, that the release of student records is not required, except when in conforming with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g. See Texas Government Code, Section 552.026. While there are certain limited instances in which the FERPA authorizes the release of student records without parental permission, release at the request of an agency such as CPS is not one of them. On the other hand, where disclosure concerns "the juvenile justice system," no parental permission is required. 20 U.S.C. §1232g(b)(1)(E). The same is true where an emergency exists and knowledge of such information is necessary to protect the health or safety of the student or other persons. See U.S.C. §1232g(b)(1)(I).

Based on the foregoing and the attached letter from CPS, the Senate Committee on Natural Resources respectfully submits the following for your opinion:

- (1) Absent a court order to the contrary, may a local school official (e.g., a principal) exercise his or her discretion to either deny access by a CPS investigator to a student at school, or require that a school official be present if a student interview is to take place at school, *without* being deemed to have interfered with a CPS investigation in violation of Texas Family Code, Section 261.303; and
- (2) Can the CPS require that a school release student records to it, without parental permission and in the absence of a showing of an emergency as provided for in U.S.C. §1232g(b)(1)(I)?

Your prompt opinion on these issues would be greatly appreciated.

Sincerely,



JEB:jl/sn



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Your prompt opinion on these issues would be greatly appreciated.

Sincerely,





TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

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March 25, 1996

Dr. John E. Wilson
Clear Creek Independent School District
P.O. Box 799
League City, Texas 77574-0799

Dear Dr. Wilson:

We have received numerous requests for clarification regarding the state laws pertaining to child abuse situations in the schools. Therefore, we are writing all school districts in the area to provide them with this information.

The Texas Department of Protective and Regulatory Services (TDPRS), Children's Protective Services staff have the authority under the Texas Family code, Section 261 to interview children suspected of being abused or neglected. Some school administrators have been concerned about allowing such interviews on their campus. Section 261.302 of the Texas Family Code, made it clear that children could be interviewed by TDPRS while they are at school, without prior notice to their parent(s).

The above amendment to this section, House Bill 358 also reads,

"student records at educational institutions funded wholly or in part by the state revenue...shall be made available upon request of...a person conducting a child abuse investigation required by Section 261.301 G(A), Family Code."

Again, the intent of this legislation is to allow TDPRS, Children's Protective Services staff to interview a child and obtain the child's school records without parent's permission.

Another section of the Family code 262.104 allows TDPRS, Children's Protective Services staff to remove a child in an emergency situation without first obtaining a court order. The intent of this section is to allow us to more rapidly protect a child from further abuse and neglect. Although it is rare that staff will need to take protective custody of children, the majority of our removals are conducted under the authority of this section, and many of those are done at the child's school.

Many school personnel have raised a question about school personnel attending interviews between the child and the TDPRS representative. Having another person in the interview could in itself create a violation of the Family Privacy Rights 261.302 (b)(2), since that person is not authorized by statute to be present.

Protective Services investigations are confidential. (Texas Family Code, Section 261.201; Attorney General's Open Records Decision #73). To allow persons from outside of the TDPRS, Children's Protective Services to "sit in" on an interview would be to allow that person access to confidential information as it is created. A CPS caseworker may only allow someone to attend the interview if in the caseworker's judgment this would help the child without violating the Family Privacy Rights 261.302 (b)(2). It is possible that they may be called to court later to testify.

In an effort to make clear that the public policy of this State is to encourage reports and cooperation with child abuse investigations, section 261.106 in the Code is as follows:

"A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies on otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from civil or criminal liability that might otherwise be incurred or imposed." 261.106 (A)

We would appreciate you disseminating this letter to all principals. If you ever have doubts about whether an individual works for TDPRS, please ask for their identification. Should you have any questions about this information, or need information about child abuse, please feel free to contact your local TDPRS, Children's Protective Services office or one of the Program Directors listed below:

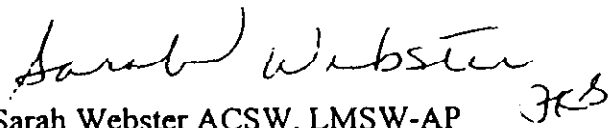
Elizabeth A. Scarborough, (Harris County) 713-626-5701

Linda Fitzwater, (Montgomery, Walker, Brazoria, Austin, Waller, Colorado, Wharton, and Matagorda County) 409-865-9164

Randy W. Joiner, (Galveston, Ft. Bend, Liberty and Chambers County) 409-766-5931

Your Partnership continues to be an essential part of the network that protects children in our community, I value your expertise and leadership. Please call me if I can be of service to you.

Very truly yours,


Sarah Webster ACSW, LMSW-AP *JSB*
Regional Director for Child Protective Services

cc: David Reilly
TDPRS Program Directors